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IN THE

Supreme Court of the United States

No. 71- 71-689

COMMONWEALTH OF PENNSYLVANIA, et al.,

Petitioners,

v.

GEORGE P. BAKER, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[Counsel listed inside cover]

November, 1971

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IN THE

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No. 71-

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GEORGE P. BAKER, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioners, Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, State of New York, Illinois Commerce Commission, Public of the State of Indiana, Public Utilities Commission of Ohio, Michigan Public Service Commission, City of Philadelphia, City of Pittsburgh, City of Dayton, City of Cincinnati, City of Greencastle, City of Terre Haute, City of Fort Wayne and National Association of Railroad Passengers, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit, entered in this proceeding on July 16, 1971.

OPINIONS BELOW

The opinion of the U. S. District Court (App. 1a-9a) is reported as *In Re Penn Central Transportation Company*, 329 F. Supp. 387 (E.D. Pa. 1971). The opinion of the U. S. Court of Appeals (App. 1b-13b) is reported as *In Re Penn Central Transportation Company*, 446 F.2d 1109 (3rd Cir. 1971).

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on July 16, 1971. (App. 14b) A timely petition for rehearing *en banc* was denied on August 23, 1971. (App. 15b) This Court's jurisdiction is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether enactment of Rail Passenger Service Act of 1970 now permits a railroad reorganization court to exercise complete control over passenger train continuances and discontinuances.

2. Whether the ruling in *Baker v. Pennsylvania*, 401 U. S. 902, vacating a judgment on account of mootness, implies that Rail Passenger Service Act of 1970 has pre-empted methods formerly utilized to discontinue service of passenger trains.

STATUTES INVOLVED

The statute involved is Rail Passenger Service Act of 1970, 45 U. S. C. 501, et seq., 84 Stat. 1327, P. L. 91-518, enacted October 30, 1971, and is set out in full herein. (App. 1c-15c)

STATEMENT

Penn Central Transportation Company[1] received authority from the Interstate Commerce Commission (I. C. C.) on September 30, 1970, to discontinue some 16 passenger trains.[2] These petitioners instituted an action in the U. S. District Court for the Western District of Pennsylvania, to review the I. C. C. order.[3] A three-judge court was convened, and an interlocutory injunction entered.[4]

One month later, on October 30, 1970, legislation was enacted known as Rail Passenger Service Act of 1970.[5] The new law provided for a "freeze" on passenger train discontinuances until May 1, 1971.[6] Penn Central's appeal from the interlocutory injunction was dismissed as moot. *Baker v. Pennsylvania*, 401 U. S. 902 (1971):

> The judgment is vacated and the case is remanded to the United States District Court for the Western District of Pennsylvania with instructions to vacate the interlocutory injunction appealed from because the injunction, together with the underlying cause, has become moot.

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[1] The carrier entered reorganization on June 21, 1970, pursuant to section 77 of the Bankruptcy Act, 11 U.S.C. 205. (Bank. No. 70-347, U.S. D.C.–E.D. Pa.) The trustees, appointed by U.S. District Judge John P. Fullam, and confirmed by the Interstate Commerce Commission, are: George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz.

[2] *Penn Central Transportation Co. Discontinuance*, 338 I.C.C. 380 (decided September 22, 1970).

[3] Civil No. 71-1156. Milton J. Shapp, who subsequently was elected Governor of Pennsylvania, instituted a separate action. Civil No. 71-1157.

[4] 28 U.S.C. 2284(3), 2321-25.

[5] The complete text of the Act is set forth herein. (App. 1c-15c)

[6] Sections 401, 404 and 802. (App. 7c, 9c, 13c).

Upon issuance of this Court's mandate, Penn Central threatened to discontinue the 16 trains, in advance of the May 1, 1971 date. These petitioners instituted an action before the U. S. District Court in the Western District of Pennsylvania, to enjoin the threatened train discontinuances. Thereupon, the railroad applied to its reorganization court, in the Eastern District of Pennsylvania, to enjoin these petitioners from maintaining or continuing their suit in the Western District of Pennsylvania.

The reorganization court, while noting that petitioners' action was prompted by "justifiable concern"[7] and that petitioners "are undoubtedly correct in their assertion that, ordinarily, matters relating to train discontinuances and the like are generally not heard by the reorganization court"[8] nevertheless ruled that enactment of Rail Passenger Service Act of 1970 presented a different situation. The court observed that the Trustees had an application pending before the court for leave to enter into a contract with Amtrak, and that dissatisfaction with Amtrak's level of passenger service might cause litigation in a wide variety of forums, which would hamper reorganization efforts.[9] A sweeping injunction, known as Order No. 232, was issued against all persons and non-federal agencies, from instituting or maintaining any litigation directly affecting the continuance or discontinuance of trains "covered" by Rail Passenger Service Act of 1970 (App. 9a):

> "1. That the respondents . . . are severally enjoined and restrained from proceeding further with the action they have instituted in the United States District Court for the Western District of Pennsylvania . . . until further order of this Court; except that they may, if they so desire, cause the withdrawal and dismissal of said action.

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[7] App. 8a.

[8] App. 6a.

[9] App. 6a-7a.

> "2. That the said respondents, and all other persons, governmental entities (except the Federal government and the departments and agencies thereof), firms and corporations, having notice or knowledge of the entry of this order, are severally enjoined and restrained, until further order of this Court, from instituting or maintaining any litigation directly affecting the continuance or discontinuance of passenger trains covered by the . . . Rail Passenger Service Act of 1970 . . . in any court other than this Court, or without first obtaining leave of this Court to do so."

The Court of Appeals heard the matter together with appeals taken by labor organizations from an order of the reorganization court with respect to an action in the District of Columbia.[10] Order No. 232 was affirmed. The Court of Appeals recognized that "matters relating to train discontinuances are not ordinarily heard by the reorganization court," but held the district court's action was justified in this case, by quoting, verbatim, the district court's opinion.[11] The Court of Appeals added that implicit in the dismissal for mootness in *Baker v. Pennsylvania*, 401 U.S. 902, is a recognition that Rail Passenger Service Act of 1970 has pre-empted methods formerly utilized to discontinue service of passenger trains.[12]

Order No. 232 is working particular hardship upon the Pennsylvania petitioners. For example, subsequent to the issuance of Order No. 232 by the reorganization court, and in compliance therewith, the Attorney General of Pennsylvania and Pennsylvania Public Utility Commission dismissed their action in the Commonwealth court seeking to prevent the discontinuance of certain "commuter" trains by Penn

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[10] We are advised that the labor organizations do not intend to petition for certiorari.

[11] App. 8b-9b.

[12] App. 3b.

Central as in violation of State law.[13] The action was thereupon filed in the reorganization court.[14] The reorganization court authorized the discontinuance of 44 trains by Penn Central, while referring the "commuter" versus "intercity" question to the I. C. C. *In Re Penn Central Transportation Company*, 329 F. Supp. 572 (E.D. Pa. 1971). Subsequently, the I. C. C. ruled the trains to be "commuter," by reports entered June 24 and July 26, 1971.[15] Over the protest of the Commonwealth, the Public Utility Commission, and City of Philadelphia, the reorganization court has deferred the commencement of proceedings seeking to restore these trains to Penn Central control.

REASONS FOR GRANTING THE WRIT

I. RAIL PASSENGER SERVICE ACT OF 1970 DOES NOT GIVE COMPLETE CONTROL OVER PASSENGER TRAIN DISCONTINUANCES TO RAILROAD REORGANIZATION COURTS.

The order sustained below is sweeping in scope. State agencies are enjoined from instituting or maintaining any litigation "directly affecting the continuance or discontinuance" of passenger trains "covered" by Rail Passenger Service Act of 1970. (App. 9a) Yet it is clear that a reorganization court does not have exclusive jurisdiction over all controversies that in some way affect the debtor's estate. *Calloway v. Benton*, 336 U.S. 132 (1949). The authority of a railroad reorganization court is even more circumscribed than for an ordinary bankrupt estate. *Palmer v. Massachusetts*, 308 U.S. 79, 87 (1939):

> "But the whole scheme of section 77 leaves no doubt that Congress did not mean to grant to the district courts the same scope as to bankrupt roads that they may have in dealing with other bankrupt estates."

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[13] No. 277 C.D., 1971.

[14] Civil No. 71-1002, filed April 28, 1971.

[15] Finance Docket Nos. 26632 & 26634.

The authority of State agencies must be reorganized. The Court in *Palmer v. Massachusetts, supra,* answered the very argument advanced by the Penn Central reorganization court below, i.e., that lack of control over local passenger services will impair the bankruptcy court's power to formulate a reorganization plan, 308 U. S. at 89:

> "Continuance of state control over these local passenger services will, it is urged, impair the bankruptcy court's power to formulate a reorganziation plan for the approval of the Interstate Commerce Commission. Such embarrassments, due either to the time required for exhaustion of orderly state procedure or to the financial losses that may be involved in the continuance of local services until duly terminated by the state, may easily be exaggerated."

Section 307(b) of Rail Passenger Service Act of 1970 expressly preserves State sanctions. (App. 6c):

> "Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act."

The assailed order of the reorganization court applies to trains "covered" by the new law, but there are serious questions as to what services are so "covered." The delineation between "commuter" and "intercity" service is not always clear. Cf. *United States v. Chicago & E.I.R. Co.*, 400 U.S. 987 (1971). Moreover, the new law gives the I. C. C. authority to determine whether trains included within the "Basic System" should be discontinued. Section 404(a)(3) reads (App. 9c):

> "If at any time after July 1, 1973, the Corporation determines that any train or trains in the basic system in whole or in part are not required by public convenience and necessity, or will impair the ability of the Corporation to adequately provide other services, such train or trains may be discontinued under the procedures of section 13a of the Interstate Commerce Act (49 U.S.C. 13a): *Provided, however.* That

at least thirty days prior to any change or discontinuance, in whole or in part, of any service under this subsection, the Corporation shall mail to the Governor of each State in which the train in question is operated, and post in every station, depot, or other facility served thereby notice of the proposed change or discontinuance. The Corporation may not change or discontinue this service if prior to the end of the thirty-day notice period, State, regional, or local agencies request continuation of the service and within ninety days agree to reimburse the Corporation for a reasonable portion of any losses associated with the continuation of service beyond the notice period."

Railroads contracting with Amtrak are relieved of their entire responsibility for the provision of intercity rail passenger service, but any discontinuance of service is subject to the notice procedures of the Interstate Commerce Act. The I. C. C. has issued special regulations under Rail Passenger Service Act of 1970.[16] Section 401(a)(1) reads (App. 7c):

"On or before May 1, 1971, the Corporation is authorized to contract and, upon written request therefor from a railroad, shall tneder a contract to relieve the railroad, from and after May 1, 1971, of its entire responsibility for the provision of intercity rail passenger service. On or after March 1, 1973, but before January 1, 1975, the Corporation is authorized to contract, and upon written request therefor, shall tneder a contract to relieve the railroad of its entire responsibility for the provision of intercity rail passenger service and such relief shall become effective upon the date on which such contract is entered into. Contracts may be entered into on or before May 1, 1971, notwithstanding the fact that the decision of the Commission under section 102(f) of this Act with respect to avoidable loss has not become final. Any contract entered into before such

[16] Ex Parte No. 217, 36 F.R. 5219-20 (Mar. 18, 1971).

> decision of the Commission has become final shall be subject to adjustment to assure that the contract is consistent with such final decision of the Commission. The contract may be made upon such terms and conditions as necessary to permit the Corporation to undertake passenger service on a timely basis. Upon its entering into a valid contract (including protective arrangements for employees), the railroad shall be relieved of all its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under part I of the Interstate Commerce Act or any State or other law relating to the provision of intercity passenged service: *Provided*, That any railroad discontinuing a train hereunder must give notice in accordance with the notice procedures contained in section 13a(1) of the Interstate Commerce Act."

The Penn Central reorganization court has erroneously relied upon the new legislation in an attempt to control litigation affecting passenger train service. There is nothing in the legislative history of Rail Passenger Service Act of 1970 to suggest that Congress intended to overrule *Palmer v. Massachusetts, supra.* Indeed, attempts by railroad reorganization courts to seize control over labor relations, condemnation proceedings, and line abandonments, have been unsuccessful. *Order of Conductors v. Pitney*, 326 U.S. 561 (1946); *Massachusetts v. Bartlett*, 384 F.2d 819, 821-22 (1st Cir. 1967), cert den. 390 U. S. 1003 (1968); *In Re Huntingdon & Broad Top Mt. R. R. & Coal Co.*, 213 F.2d 411, 415 fn. 6, 417 (3rd Cir. 1946); *Thompson v. Texas Mexican R. Co.*, 328 U. S. 134 (1946). In Re New York, S. & W. R. Co., 160 F.2d 29 (3rd Cir. 1946).

Finally, there may be an apparent conflict of duties when the Penn Central reorganization court presumes to pass upon regulatory aspects of actions which the court itself previously has authorized. *In Re Penn Central Securities Litigation*, 322 F. Supp. 1021 (Mult. Dist. 1971).

II. JUDGMENTS VACATED FOR MOOTNESS BY THIS COURT SHOULD CARRY NO PRESUMPTIONS.

The Court of Appeals relied upon the dismissal for mootness, ordered in *Baker v. Pennsylvania*, 401 U. S. 902 (1971), to mean that Rail Passenger Service Act of 1970 has pre-empted methods formerly utilized to discontinue trains. (App. 3b):

> "Implicit in the Court's ruling was a recognition that the Act has pre-empted methods formerly utilized to discontinue service of passenger trains: . . . ."

A dismissal for mootness, in the form employed in *Baker v. Pennsylvania*, is entitled to no res judicata effect. *United States v. Munsingwear*, 340 U. S. 36 (1950). Moreover, this Court gave no reasons for its order. The new legislation imposed a "freeze" on passenger discontinuances, until at least May 1, 1971, but did not pre-empt methods utilized to discontinue passenger trains. The bulk of passenger train service today consists of "commuter" or other "short-haul" service, and continues to be subject to State jurisdiction and/or Section 13a of the Interstate Commerce Act, 49 U.S.C. 13a. Train service categorized as "intercity" is still subject to I.C.C. "procedures" and "notice procedures" with respect to discontinuances. Section 401(a)(1) and 404(a)(3).

The Court of Appeals erred in according any presumption to a dismissal for mootness by this Court.[17]

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[17] The Court of Appeals also referred to section 802 of the new law in support of its pre-emption view. (App. 3b) To be sure, no railroad may discontinue any intercity rail passenger service other than in accordance with Rail Passenger Service Act of 1970; however, the new law makes reference to the continued availability of State sanctions and I.C.C. provisions and, of course, section 802 makes no reference to actions affecting the "continuance" of intercity passenger trains, or to "commuter" trains in any manner.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Third Circuit.[18]

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[18] The constitutionality of Rail Passenger Service Act of 1970 is drawn in inssue on appeal in No. 71-658, *Quincy College and Sem. Corp. v. Burlington Norther, Inc.*, docketed November 12, 1971.

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November, 1971

APPENDIX A

In the Matter of PENN CENTRAL TRANSPORTATION COMPANY, Debtor.

In re Application to Restrain from Legal Proceedings with Respect to NATIONAL RAIL PASSENGER CORPORATION.

Bankruptcy No. 70-347.

United States District Court,
E. D. Pennsylvania.
April 16, 1971.

OPINION AND ORDER

FULLAM, District Judge.

Before going into reorganization under § 77 of the Bankruptcy Act on June 21, 1970, the Debtor had filed applications with the Interstate Commerce Commission for the discontinuance of various passenger trains. On September 22, 1970 (served September 30, 1970) the ICC entered an order at Finance Docket No. 26106, authorizing, inter alia, the discontinuance of 16 trains.[1] This order was appealed to a statutory three-judge court in the Western District of Pennsylvania (Civil Actions Nos. 70-1156 and 70-1157). In those proceedings, a temporary restraining order was entered on September 30, 1970, later expanded into an interlocutory injunction,

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1. Trains Nos. 13, 92, 22, 23, 77, 78, 548, 549, 63, 64, 315 and 316, 14, 17, 351 and 52, between Buffalo, New York and Chicago, Illinois.

restraining the discontinuance of the 16 trains. The Trustees of the Debtor sought unsuccessfully to challenge the jurisdiction of the three-judge court, with respect to four of the trains running through Canada; and initially, for a brief period, attempted to assert that this Court, by reason of the reorganization proceedings, had exclusive jurisdiction.[2]

The Trustees appealed the decision of the three-judge court, insofar as it related to the four Canadian trains, to the Supreme Court of the United States.

On October 30, 1970, the Rail Passenger Service Act of 1970, P.L. 91–518, 45 U.S.C. § 501 et seq., was enacted into law. Section 802 of that statute reads as follows:

> "Section 802. *Effect on pending proceedings.* Upon enactment of this Act, no railroad may discontinue any intercity rail passenger service whatsoever other than in accordance with the provisions of this chapter, notwithstanding the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any Federal or State court, agency, or authority."

Accordingly, on February 22, 1971, the Supreme Court disposed of the pending appeal from the three-judge court interlocutory injunction as follows:

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2. This contention was abandoned shortly after the Trustees entered the case.

"Judgment vacated and case is remanded to the United States District Court for the Western District of Pennsylvania with instructions to vacate the interlocutory injunction appealed from because the injunction, together with the underlying cause, has become moot." Baker v. Pennsylvania, 401 U.S. 902, 91 S.Ct. 875, 27 L.Ed.2d 801.

Pursuant to the Supreme Court's mandate, the three-judge District Court, on March 25, 1971, entered the following order in each of the two cases:

"AND NOW, this 25th day of March, 1971, for the reasons heretofore set forth, it is ORDERED that the preliminary injunction heretofore entered be and the same is VACATED and the complaint be and the same is DISMISSED for mootness."

Meanwhile, on March 19, 1971, a group of 16 plaintiffs,[3] all of whom had been parties to one of the cases in the three-judge court, instituted a new action (Civil Action No. 71–282) in the United States District Court for the Western District of Pennsylvania, seeking a pre-

3. Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, Illinois Commerce Commission, Michigan Public Service Commission, Public of the State of Indiana, Public Utilities Commission of Ohio, State of New York, Cities of Pittsburgh, Philadelphia, Dayton, Cincinnati, Green Castle, Terre Haute, and Fort Wayne, National Association of Railroad Passengers and United Transportation Union.

liminary, and ultimately a final, injunction against the discontinuance of the 16 passenger trains which had been involved in the proceeding before the statutory court. The complaint alleges, on information and belief, that there is as yet no contract in effect between the Debtor and the National Rail Passenger Service Corporation ("Railpax"), and that discontinuance of these trains would be a violation of the National Rail Passenger Service Act of 1970, *supra*.

The Trustees thereupon filed in this Court a petition and obtained an order (No. 214) on the plaintiffs in this latest action to show cause why they should not be restrained from proceeding further with the new litigation unless and until they should seek, and obtain, leave of this Court to proceed with the suit. A hearing has been held, on April 15, 1971, and extensive oral argument has been heard.

It is to be noted that the new litigation in the Western District, Civil Action No. 71-282, clearly is not, and does not purport to be, an appeal from any ICC order to a statutory court. Nor can it be viewed as an action for damages arising out of the operation of trains, within the meaning of § 77(j) of the Bankruptcy Act. It would seem reasonably certain, therefore, that the filing of this action is in contravention of Order No. 1 entered in these proceedings.

Since the respondents are, for the most part, governmental entities seeking only to protect a public interest, the technical violation of Order No. 1 will be disre-

garded and the "response" filed, and arguments advanced, on behalf of the respondents will be treated as either a request that Order No. 1 be interpreted as not prohibiting the litigation they have filed, or as a request pursuant to Order No. 1, for leave to proceed with it.

The real issues raised by the pending petition and response, are (1) whether this Court has the power to restrain the prosecution of the litigation in question, and (2) if so, whether that power should be exercised in this instance.

As to the first question, there can be no doubt. Section 77(j) of the Bankruptcy Act expressly confers upon a reorganization court the authority to stay pending suits and enjoin initiation of litigation; and it has been authoritatively determined that this power is in no way abridged by 28 U.S.C. § 959. Ex Parte Baldwin, 291 U.S. 610, 54 S.Ct. 551, 78 L.Ed. 1020 (1934); Diners Club, Inc. v. Bumb, 421 F.2d 396 (9th Cir. 1970).

Needless to say, this does not involve a determination that the District Court for the Western District of Pennsylvania is without jurisdiction in the matter. That issue need not be considered; the jurisdiction of the latter court, and many other courts, may be assumed. The issue here is whether this Court, in the furtherance of the reorganization proceeding, should exercise its discretion by restraining the litigants from proceeding in some other forum.

The respondents are undoubtedly correct in their assertion that, ordinarily, matters relating to train discontinuances and the like are generally not heard by the reorganization court. Presumably, this is because, until enactment of the Railpax statute, such litigation consisted principally, if not entirely, of routine appeals from decisions of regulatory agencies. The normal processing of such matters by other courts and agencies is clearly contemplated under § 77(c) (2) of the Bankruptcy Act. Moreover, the volume of such litigation has usually been such as to pose no significant drain on the resources of a Debtor's legal department, nor has the outcome in each case been likely to have any profound effect upon the reorganization process.

In view of the Railpax statute, however, the present situation is quite different. This Court has pending before it the preliminary application of the Trustees for leave to enter into a Railpax contract and to borrow the money which will be required for the initiation payment under that statute. A hearing on that application is scheduled to be held on April 20, 1971. As this opinion is being written, crucial negotiations are in progress between the Trustees and the Railpax incorporators, and various other interested Federal agencies, seeking to establish the terms of the proposed contract. The views of the Trustees and the many other parties in interest in the reorganization proceeding, as to the desirability of "joining" Railpax, and the ultimate decision of this Court as to whether to approve such action, must

necessarily involve a careful weighing of the advantages and disadvantages. It would be unthinkable, in my view, that this already complicated situation should be further complicated by the uncertainties of pending litigation in other courts. It now appears that a wide range of issues involving the implementation of the Railpax legislation will be coming to a head within the next few weeks or months.

The Railpax statute contemplates that the public corporation thereby established will assume the operation of designated inter-city trains, and will compensate carriers for such operations pursuant to contract and that the contracting carriers will thereupon be permitted forthwith to terminate all other inter-city passenger trains. If the Debtor does not participate in Railpax, the statute requires that no inter-city passenger train now in service may be discontinued until 1975.

It is a matter of common knowledge that very many interested persons and governmental entities and agencies question the adequacy of inter-city rail passenger service proposed to be supplied by Railpax. It is not inconceivable that, if they were free to do so, large numbers of such persons, entities and groups might seek to litigate particular issues in a wide variety of forums. This would clearly hamper reorganization efforts, not only because of the burden of the litigation itself, but because of the pros-

pect of inconsistent results.[4] It is apparent, therefore, that, at least for the present, this Court should retain control over litigation involving the impact of the National Rail Passenger Service Act of 1970 upon the Debtor.

In fairness to the respondents, it should be noted that the new litigation in the Western District was prompted by justifiable concern that the Debtor might attempt to discontinue the 16 trains in violation of the statute, on the basis of an erroneous interpretation of the Supreme Court's action; and that this concern may well have been exacerbated by some of the arguments advanced on behalf of the Trustees in the earlier litigation and elsewhere. However, by notices posted on or about March 30, 1971, as well as by statements at the hearing in this matter, the Trustees have made it clear that they have no intention of attempting to discontinue trains except in accordance with the Railpax statute. While it is probably unnecessary to do so, I have concluded that, for the reassurance of all parties involved, the position expressed by the Trustees in this regard should be incorporated in the order now to be entered.

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4. There is no implication here that this Court would be less likely to err than other tribunals, but merely that this Court's errors would be more likely to be consistent, and would be readily amenable to more consistent correction on appeal.

ORDER NO. 232

And now, this 16th day of April, 1971, it is ordered:

1. That the respondents named in Order No. 214 herein are severally enjoined and restrained from proceeding further with the action they have instituted in the United States District Court for the Western District of Pennsylvania, Civil Action No. 71–282, until further order of this Court; except that they may, if they so desire, cause the withdrawal and dismissal of said action.

2. That the said respondents, and all other persons, governmental entities (except the Federal government and the departments and agencies thereof), firms and corporations, having notice or knowledge of the entry of this order, are severally enjoined and restrained, until further order of this Court, from instituting or maintaining any litigation directly affecting the continuance or discontinuance of passenger trains covered by the National Rail Passenger Service Act of 1970, 45 U.S.C. § 501 et seq., in any court other than this Court, or without first obtaining leave of this Court to do so.

3. That the Trustees of the Debtor are directed to apply to this Court, on at least five (5) days' notice to the respondents and to all persons customarily notified in these proceedings, for leave to discontinue any inter-city passenger trains covered by said Act, before effectuating such discontinuance.

APPENDIX B

In the Matter of PENN CENTRAL TRANSPORTATION COMPANY, Debtor (two cases).

Appeal of CONGRESS OF RAILWAY UNIONS, in Nos. 71-1366 and 71-1386.

Appeal of RAILWAY LABOR EXECUTIVES' ASSOCIATION, in Nos. 71-1367 and 71-1387.

Appeal of COMMONWEALTH OF PENNSYLVANIA et al., in No. 71-1403.

Nos. 71-1366, 71-1367, 71-1386, 71-1387 and 71-1403.

United States Court of Appeals, Third Circuit.

Argued June 2, 1971.

Decided July 16, 1971.

OPINION OF THE COURT

ALDISERT, Circuit Judge.

These consolidated appeals contest two orders promulgated by the United States District Court for the Eastern District of Pennsylvania, sitting as a railroad reorganization court, Penn Central Transportation Company, debtor.

Order No. 232 prohibits the appellants [1] from "instituting or main-

1. Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, City of Philadelphia, City of Pittsburgh, State of New York, Illinois Commerce Commission, Michigan Public Service Commission, Public of the State of Indiana, Pub-

taining any litigation directly affecting the continuance or discontinuance of passenger trains covered by the Act" in any court other than the reorganization court, or "without first obtaining leave" of the court to do so. The order followed an application by Penn Central for relief after appellants had instituted an action in the United States District Court for the Western District of Pennsylvania seeking to enjoin the discontinuance of certain trains contemplated by the National Rail Passenger Corporation (Amtrak), a corporate body created by the Rail Passenger Service Act of 1970, (1a) P.L. 91–518, 45 U.S.C. § 501 et seq. (Railpax).

Order No. 242 denied leave requested, pursuant to Order 232, by appellants Railway Labor Executives' Association and Congress of Railway Unions to join Penn Central in a civil action brought on April 23, 1971, in the United States District Court for the District of Columbia challenging the labor protective provisions adopted pursuant to the Act.

Order No. 232

Because appellants question the jurisdiction of the reorganization court to promulgate this order and argue, assuming jurisdiction to lie, that exercise of that jurisdiction was in this case an

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lic Utilities Commission of Ohio, City of Dayton, City of Cincinnati, City of Greencastle, City of Terre Haute, City of Fort Wayne, National Association of Railroad Passengers, and United Transportation Union.

abuse of discretion, it is necessary briefly to review the genesis of this order.

On September 30, 1970, the Interstate Commerce Commission authorized Penn Central to discontinue 16 passenger trains. An action was brought by appellants[2] in the Western District of Pennsylvania to review the decision. A three-judge court was convened, and an interlocutory injunction was issued, enjoining the discontinuance. Penn Central appealed the injunction order to the Supreme Court, which, in Baker v. Pennsylvania, 401 U.S. 902, 91 S.Ct. 875, 27 L.Ed.2d 801 (1971), vacated the judgment, ruling that the matter had become moot.[3] Thereafter, appellants filed a second action in the Western District of Pennsylvania at No. 71–282 seeking to prevent any passenger service discontinuance until May 1, 1971, Amtrak's be-

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2. A companion action was brought at No. 70–1157, Milton J. Shapp v. United States.

3. Implicit in the Court's ruling was a recognition that the Act had pre-empted methods formerly utilized to discontinue service of passenger trains:

> SEC. 802. EFFECT ON PROCEEDINGS.
>
> Upon enactment of this Act, no railroad may discontinue any intercity rail passenger service whatsoever other than in accordance with the provisions of this Act, notwithstanding the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any Federal or State court, agency, or authority.

Railpax was enacted October 30, 1970.

ginning date. This action was necessitated, according to appellants, because "[d]espite the Supreme Court's ruling, Penn Central threatened to discontinue the trains. This defiant attitude on the part of the Trustees caused these public parties to institute suit * * * on March 19, 1971."

On April 2, 1971, Penn Central obtained from the reorganization court a rule to show cause why appellants should not be enjoined from proceeding with the Western District action because the subject matter was "subsumed in the issues presented before" the reorganization court on a petition by trustees for authority to issue trustee certificates pursuant to arrangements under the Act.[4]

After hearing, the reorganization court found that the Western Pennsylvania litigation would hamper Penn Central organizational efforts and, by Order No. 232, enjoined appellants from proceeding in that action. This appeal followed.

Appellants urge that no jurisdiction lies in the reorganization court to enjoin matters relating to train discontinuances. Alternatively, they argue that exercise of jurisdiction here was an abuse of discretion. As recognized by

4. Previously, on March 31, 1971, the trustees had petitioned the court for authority (1) to enter into a contract with Amtrak and (2) to obtain financial support necessary for such a contract. The court approved Penn Central's entry into Amtrak on April 27, 1971.

the statutory court, a reorganization court does not have "exclusive jurisdiction over all controversies that in some way affect the debtor's estate," Callaway v. Benton, 336 U.S. 132, 69 S.Ct. 435, 93 L.Ed. 553 (1949), and may not oust the authority of administrative agencies charged with the responsibility of regulating service. Palmer v. Massachusetts, 308 U.S. 79, 60 S.Ct. 34, 84 L.Ed. 93 (1939).[5] But the teachings of these cases do not preclude the reorganization court from "enjoin[ing] the prosecution of any suit which would take from it the decision of any question which it has the duty to decide in connection with the reorganization or which would hamper it in any way in exercising the power imposed upon it." In re Imperial "400" National, Inc., 429 F.2d 671, 677 (3rd Cir. 1970).

Our inquiry, therefore, resolves itself to a single issue: would the persistence of the Western District proceedings relating to the discontinuance of passenger service trains, now limited to an interpretation of the Rail Passenger Service Act of 1970,[6] hamper the reorganization

5. Memorandum Opinion Sur Interlocutory Injunction, Conclusion of Law No. 3. Statutory court (Aldisert, Circuit Judge, and Gourley and Rosenberg, District Judges.)

6. Sections 404, 801, 802, Pub.Law 91-518, October 30, 1970:

SEC. 404. DISCONTINUANCE OF SERVICE.

(a) Unless it has entered into a contract with the Corporation pursuant to section 401(a) (1) of this Act, no

court in exercising the power imposed on it by the bankruptcy law?

railroad, may discontinue any intercity passenger train whatsoever prior to January 1, 1975, the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, a Federal or State court, agency, or authority to the contrary notwithstanding. On and after January 1, 1975, passenger train service operated by such railroad may be discontinued under the provisions of section 13a of the Interstate Commerce Act. Upon filing of a notice of discontinuance by such railroad, the Corporation may undertake to initiate passenger train operations between the points served.

(b) (1) The Corporation must provide the service included within the basic system until July 1, 1973, to the extent it has assumed responsibility for such service by contract with a railroad pursuant to section 401 of this Act.

(2) Except as provided in section 403 (a) of this Act, service beyond that prescribed for the basic system undertaken by the Corporation upon its own initiative may be discontinued at any time.

(3) If at any time after July 1, 1973, the Corporation determines that any train or trains in the basic system in whole or in part are not required by public convenience and necessity, or will impair the ability of the Corporation to adequately provide other services, such train or trains may be discontinued under the procedures of section 13a of the Interstate Commerce Act (49 U.S.C. 13a): *Provided, however,* That at least thirty days prior to any change or discontinuance, in whole or in part, of any service under this subsection, the Corporation shall mail to the Governor of each State in which the train in question is operated, and post in every station,

The reorganization court found that "at least for the present" it should

depot, or other facility served thereby notice of the proposed change or discontinuance. The Corporation may not change or discontinue this service if prior to the end of the thirty-day notice period, State, regional, or local agencies request continuation of the service and within ninety days agree to reimburse the Corporation for a reasonable portion of any losses associated with the continuation of service beyond the notice period.

(4) For the purposes of paragraph (3) of this subsection, the reasonable portion of such losses to be assumed by the State, regional, or local agency shall be no less than 66⅔ per centum of, nor more than, the solely related costs and associated capital costs, including interest on passenger equipment, less revenues attributable to, such service. If the Corporation and the State, regional, or local agencies are unable to agree upon a reasonable apportionment of such losses, the matter shall be referred to the Secretary for decision. In deciding this issue the Secretary shall take into account the purposes of this Act and the impact of requiring the Corporation to bear such losses upon its ability to provide improved service within the basic system.

SEC. 801. ADEQUACY OF SERVICE.

The Commission is authorized to prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service. Any person who violates a regulation issued under this section shall be subject to a civil penalty of not to exceed $500 for each violation. Each day a violation continues shall constitute a separate offense.

SEC. 802, *supra*, n. 3.

retain control of such litigation. Upon an examination of the reasons set forth by the reorganization court, we have concluded that this was no abuse of discretion. We recognize, as did the court below, that matters relating to train discontinuances are not ordinarily heard by the reorganization court. But we hold that the district court amply justified its action in this case:

> "In view of the Railpax statute, however, the present situation is quite different. This Court has pending before it the preliminary application of the Trustees for leave to enter into a Railpax contract and to borrow the money which will be required for the initiation payment under that statute. A hearing on that application is scheduled to be held on April 20, 1971. As this opinion is being written, crucial negotiations are in progress between the Trustees and the Railpax incorporators, and various other interested Federal agencies, seeking to establish the terms of the proposed contract. The views of the Trustees and the many other parties in interest in the reorganization proceeding, as to the desirability of 'joining' Railpax, and the ultimate decision of this Court as to whether to approve such action, must necessarily involve a careful weighing of the advantages and disadvantages. It would be unthinkable, in my view, that this already complicated situation should be further complicated by the uncertainties of pending litigation in other courts. It now appears that a wide

range of issues involving the implementation of the Railpax legislation will be coming to a head within the next few weeks or months.

* * * * * *

"It is a matter of common knowledge that very many interested persons and governmental entities and agencies question the adequacy of intercity rail passenger service proposed to be supplied by Railpax. It is not inconceivable that, if they were free to do so, large numbers of such persons, entities and groups might seek to litigate particular issues in a wide variety of forums. This would clearly hamper reorganization efforts, not only because of the burden of the litigation itself, but because of the prospect of inconsistent results. It is apparent, therefore, that, at least for the present, this Court should retain control over litigation involving the impact of the National Rail Passenger Service Act of 1970 upon the Debtor."

Order No. 242.

The labor associations also appeal from an invoking of Order No. 242 by the reorganization court prohibiting Penn Central from being added as a defendant in a District of Columbia proceeding, Civil Action No. 825–71, which they brought to attack the validity of the Secretary of Labor's certification under Section 405 of the Act.[7]

7. Section 405 provides that the contracts executed pursuant to Section 401(a) (1) shall include certain enumerated provisions for the benefit of railroad employees

There they sought a temporary restraining order and preliminary and permanent injunctions against three railroads from discontinuing rail service on May 1, 1971, under Section 401(a) (1) and against Amtrak from taking over responsibility for rail service on May 1, 1971, under Section 401(b). The request for injunction was based upon the invalidity of the Secretary's certification under Section 405(b) and the failure of the railroads to provide employee protective arrangements as required by Section 405(a) and (b) resulting in the invalidity of the Amtrak-Railroad contracts. At the time the suit was brought, April 23, 1971, the application of the trustees for authorization of Penn Central to execute Amtrak contracts was pending before the reorganization court. Approval was received April 27, 1971, after hearings were held on April 20 and 23, 1971. Proper notice had been given to the labor association appellants because they had been permitted to in-

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affected by the railroads' discontinuance of intercity rail passenger service "which shall in no event provide benefits less than those established pursuant to Section 5(2) (f) of the Interstate Commerce Act"; and that no Section 401(a) (1) contract may be executed unless the Secretary of Labor has certified to Amtrak that the labor protective conditions of such contract provide the fair and equitable protection required by the Act. The Secretary of Labor issued his certification pursuant to Section 405(b) on April 16, 1971.

tervene generally in the reorganization proceedings.[8]

On April 28, 1971, the court entered its Order No. 242 denying appellants' request to join Penn Central in the District of Columbia action on the ground that they should have raised at the Philadelphia hearings on April 20 and 23, 1971, all issues raised in the District of Columbia action and since they did not do so, they are not permitted to raise them thereafter "on principles of *res judicata*, estoppel and laches." The court held that the "contracting parties, and this Court, had a right to rely upon the certification of the Secretary of Labor * * * as the basis for determining whether the contract was or was not in the best interests of the Debtor's estate." The court concluded that the "time to challenge the sufficiency or legality of these provisions was before the contract was approved" and that "having silently acquiesced in permitting the parties to make binding commitments, these organizations cannot be allowed to rewrite the contract."

The unions have labored hard to demonstrate that the issue concerning the Secretary's certification was not, and

8. Reorganization Court Order No. 134, January 25, 1971. These organizations represent all the labor unions which represent Penn Central's union employees. At the time the request for intervention was made the unions contended that the rights of the railroads' organized employees were likely to be affected by actions taken in the reorganization proceedings.

should not have been, before the reorganization court; hence, they urge, the *res judicata* principle was improperly applied. We agree, and, indeed, Penn Central conceded the point at oral argument. But because the Secretary's certification issue vis à vis Penn Central was not foreclosed in the reorganization court, it does not necessarily follow, as the unions would have it, that reversal is required.

The grant or denial by the reorganization court of leave to join Penn Central in the District of Columbia proceeding was a matter within the sound discretion of the court. We find the very reasons articulated by Judge Fullam in support of his promulgation of Order 232 to compel affirmance of his action here.

In assessing the propriety of the district court's action, we find no prejudice to appellants in denying them leave to join Penn Central in the District of Columbia action. We perceive the thrust of that suit to be a frontal attack on the Secretary's certification affecting Amtrak generally, and though Penn Central is now a contract party to Amtrak, by the force of appellants' own argument any judgment in the District of Columbia action affecting Amtrak generally may be subsequently enforced against Penn Central in the reorganization court, since the issue has never been considered there. In sum, Penn Central is not an indispensable party to the District of Columbia suit. Hence, it is no abuse of discretion for the district

court to refuse to require further disbursements to defend the District of Columbia action or to subject the debtor to the uncertainties the pendency of the action would generate.

The orders of the district court will be affirmed.

[Caption Omitted in Printing]

JUDGMENT

These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order No. 232 of the said District Court, filed April 16, 1971, and order No. 242 of the said District Court, filed April 28, 1971, be, and the same are hereby affirmed, with costs taxed against appellants.

ATTEST:

M. Elizabeth Ferguson
Chief Deputy Clerk

July 16, 1971

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 71-1403

IN THE MATTER OF
PENN CENTRAL TRANSPORTATION COMPANY, Debtor
COMMONWEALTH OF PENNSYLVANIA, et al., *Appellants.*

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, McLAUGHLIN, VAN DUSEN, ALDISERT, ADAMS, GIBBONS and ROSENN, *Circuit Judges.*

The petition for rehearing filed by

Commonwealth of Pennsylvania, et al., Appellants,

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ Ruggero J. Aldisert
JUDGE

Dated: August 23, 1971

APPENDIX C

Public Law 91-518
91st Congress, H. R. 17849
October 30, 1970

An Act

To provide financial assistance for and establishment of a national rail passenger system, to provide for the modernization of railroad passenger equipment, to authorize the prescribing of minimum standards for railroad passenger service, to amend section 13a of the Interstate Commerce Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rail Passenger Service Act of 1970". Rail Passenger Service Act of 1970.

TITLE I—FINDINGS, PURPOSES, AND DEFINITIONS

84 STAT. 1327
84 STAT. 1328

SEC. 101. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.

The Congress finds that modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system; that the public convenience and necessity require the continuance and improvement of such service to provide fast and comfortable transportation between crowded urban areas and in other areas of the country; that rail passenger service can help to end the congestion on our highways and the overcrowding of airways and airports; that the traveler in America should to the maximum extent feasible have freedom to choose the mode of travel most convenient to his needs; that to achieve these goals requires the designation of a basic national rail passenger system and the establishment of a rail passenger corporation for the purpose of providing modern, efficient, intercity rail passenger service; that Federal financial assistance as well as investment capital from the private sector of the economy is needed for this purpose; and that interim emergency Federal financial assistance to certain railroads may be necessary to permit the orderly transfer of railroad passenger service to a railroad passenger corporation.

SEC. 102. DEFINITIONS.

For the purposes of this Act—

(1) "Railroad" means a common carrier by railroad, as defined in section 1(3) of part I of the Interstate Commerce Act, as amended (49 U.S.C. 1(3)) other than the corporation created by title III of this Act. 41 Stat. 474; 54 Stat. 899.

(2) "Secretary" means the Secretary of Transportation or his delegate unless the context indicates otherwise. Post, p. 1330.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Basic system" means the system of intercity rail passenger service designated by the Secretary under title II and section 403(a) of this Act. Post, pp. 1329, 1335.

(5) "Intercity rail passenger service" means all rail passenger service other than (A) commuter and other short-haul service in metropolitan and suburban areas, usually characterized by reduced fare, multiple-ride and commutation tickets, and by morning and evening peak period operations, and (B) auto-ferry service characterized by transportation of automobiles and their occupants where contracts for such service have been consummated prior to enactment of this Act.

(6) "Avoidable loss" means the avoidable costs of providing passenger service, less revenues attributable thereto, as determined by the Interstate Commerce Commission pursuant to the provisions of section 553 of title 5, United States Code. 80 Stat. 383.

(7) "Corporation" means the National Railroad Passenger Corporation created under title III of this Act.

84 Stat. 1329

(8) "Regional transportation agency" means an authority, corporation, or other entity established for the purpose of providing rail passenger service within a region.

TITLE II—BASIC NATIONAL RAIL PASSENGER SYSTEM

SEC. 201. DESIGNATION OF SYSTEM.

In carrying out the congressional findings and declaration of purpose set forth in title I of this Act, the Secretary, acting in cooperation with other interested Federal agencies and departments, is authorized and directed to submit to the Commission and to the Congress within thirty days after the date of enactment of this Act his preliminary report and recommendations for the basic system. Such recommendations shall specify those points between which intercity passenger trains shall be operated, identify all routes over which service may be provided, and the trains presently operated over such routes, together with basic service characteristics of operations to be provided within the basic system, taking into account schedules, number of trains, connections, through car service, and sleeping, parlor, dining, and lounge facilities. In recommending the basic system the Secretary shall take into account the need for expeditious intercity rail passenger service within and between all regions of the continental United States, and the Secretary shall consider the need for such service within the States of Alaska and Hawaii and the Commonwealth of Puerto Rico. In formulating such recommendations the Secretary shall consider opportunities for provision of faster service, more convenient service, service to more centers of population, and service at lower cost, by the joint operation, for passenger service, of facilities of two or more railroad companies; the importance of a given service to overall viability of the basic system; adequacy of other transportation facilities serving the same points; unique characteristics and advantages of rail service as compared to other modes of transportation; the relationship of public benefits of given services to the costs of providing such services; and potential profitability of the service. The exclusion of a particular route, train, or service from the basic system shall not be deemed to create a presumption that the route, train, or service is not required by public convenience and necessity in any proceeding under section 13a of the Interstate Commerce Act (49 U.S.C. 13a).

Preliminary report to ICC and Congress.

72 Stat. 571.

SEC. 202. REVIEW OF THE BASIC SYSTEM.

The Commission, the State Commissions, the representatives of the railroads and labor organizations duly authorized under the Railway Labor Act to represent railroad employees shall, within thirty days after receipt of the preliminary report of the Secretary designating the basic system, review such report consistent with the purposes of this Act and provide the Secretary with their comments and recommendations in writing. The Secretary shall give due consideration to such comments and recommendations. The Secretary shall, within ninety days after the date of enactment of this Act, submit his final report designating the basic system to the Congress. Such final report shall include a summary of their recommendations together with his reasons for failing to adopt any such recommendation. The basic system as designated by the Secretary shall become effective for the purposes of this Act upon the date that the final report of the Secretary is submitted to Congress and shall not be reviewable in any court.

44 Stat. 577; 49 Stat. 1189; 45 USC 151-188.

Final report to Congress.

Effective date.

84 STAT. 1330

TITLE III—CREATION OF A RAIL PASSENGER CORPORATION

SEC. 301. CREATION OF THE CORPORATION.

There is authorized to be created a National Railroad Passenger Corporation. The Corporation shall be a for profit corporation, the purpose of which shall be to provide intercity rail passenger service, employing innovative operating and marketing concepts so as to fully develop the potential of modern rail service in meeting the Nation's intercity passenger transportation requirements. The Corporation will not be an agency or establishment of the United States Government. It shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

80 Stat. 177; 73 Stat. 269; D. C. Code 29-901.

SEC. 302. PROCESS OF ORGANIZATION.

Incorporators, appointment by President.

The President of the United States shall appoint not fewer than three incorporators, by and with the advice and consent of the Senate, who shall also serve as the board of directors for one hundred and eighty days following the date of enactment of this Act. The incorporators shall take whatever actions are necessary to establish the Corporation, including the filing of articles of incorporation, as approved by the President.

SEC. 303. DIRECTORS AND OFFICERS.

Board of directors.

(a) The Corporation shall have a board of fifteen directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Eight members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, for terms of four years or until their successors have been appointed and qualified, except that the first three members of the board so appointed shall continue in office for terms of two years, and the next three members for terms of three years. Any member appointed to fill a vacancy may be appointed only for the unexpired term of the director whom he succeeds. At all times the Secretary shall be one of the members of the board of directors appointed by the President and at all times at least one such member shall be a consumer representative. Three members of the board shall be elected annually by common stockholders, and four shall be elected annually by preferred stockholders of the Corporation. The members of the board appointed by the President and those elected by common stockholders shall take office on the one hundred and eighty-first day after the date of enactment of this Act. Election of the remaining four members of the board shall take place as soon as practicable after the first issuance of preferred stock by the Corporation. Pending election of the remaining four members, seven members shall constitute a quorum for the purpose of conducting the business of the board. No director appointed by the President may have any direct or indirect financial or employment relationship with any railroad during the time that he serves on the board. Each of the directors not employed by the Federal Government shall receive compensation at the rate of $100 for each meeting of the board he attends. In addition, each director shall be reimbursed for necessary travel and subsistence expenses incurred in attending the meetings of the board. No director elected by railroads shall vote on any action of the board of directors relating to any contract or operating relationship between the Corporation and a railroad, but he may be present at meetings of the board at which such matters are voted upon, and he may be included for purposes of

Conflict of interest, prohibition.

Compensation, travel expenses.

determining a quorum and may participate in discussions at any such meeting.

By-laws.

(b) The board of directors is empowered to adopt and amend by-laws governing the operation of the Corporation. Such by-laws shall not be inconsistent with the provisions of this Act or of the articles of incorporation.

(c) The articles of incorporation of the Corporation shall provide for cumulative voting for all stockholders and shall provide that, upon conversion of one-fourth of the outstanding shares of preferred stock, the common stockholders shall be entitled to elect four directors and the preferred stockholders shall be entitled to elect three directors; upon the conversion of one-half of the outstanding shares of preferred stock, the common stockholders shall be entitled to elect five directors and the preferred stockholders shall be entitled to elect two directors; upon the conversion of three-fourths of the outstanding shares of preferred stock, the common stockholders shall be entitled to elect six directors and the preferred stockholders shall be entitled to elect one director; and upon conversion of all outstanding shares of preferred stock, the common stockholders shall be entitled to elect seven directors. Any change of directors resulting from such stock conversion shall take effect at the next annual meeting of the Corporation following such stock conversion.

President and officers of corporation.

(d) The Corporation shall have a president and such other officers as may be named and appointed by the board. The rates of compensation of all officers shall be fixed by the board. Officers shall serve at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation may have any direct or indirect employment or financial relationship with any railroad during the time of his employment by the Corporation.

SEC. 304. FINANCING OF THE CORPORATION.

Stock issues, restriction.

(a) The Corporation is authorized to issue and have outstanding, in such amounts as it shall determine, two issues of capital stock, a common and a preferred, each of which shall carry voting rights and be eligible for dividends. Common stock may be initially issued only to a railroad. Preferred stock may be issued to and held only by any person other than (1) a railroad or (2) any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act. The articles of incorporation of the Corporation shall provide for the following respective rights of each issue of stock:

54 Stat. 899, 49 USC 1.

(A) COMMON STOCK.—Common stock shall have a par value of $10 per share and shall be designated fully paid and nonassessable. No dividends shall be paid on the common stock when-ever dividends on the preferred stock are in arrears.

(B)(i) PREFERRED STOCK.—Preferred stock shall have a par value of $100 per share and shall be designated fully paid and nonassessable. Dividends shall be fixed at a rate not less than 6 per centum per annum and shall be cumulative so that, if for any dividend period dividends at the rate fixed in the articles of incorporation shall not have been declared and paid or set aside for payment on the preferred shares, the deficiency shall be declared and paid or set apart for payment prior to the making of any dividend or other distribution on the common shares.

(ii) Preferred stock shall be entitled to a liquidation preference over common stock, which shall entitle preferred stockholders to a liquidating payment not less than par value plus all accrued unpaid dividends prior to any payment on liquidation to common stockholders.

(iii) Preferred stock shall be convertible into shares of common stock at such time and upon such terms as the articles of incorporation shall provide.

(b) At no time after the initial issue is completed shall the aggregate of the shares of common stock of the Corporation owned by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act, directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control, exceed 33⅓ per centum of such shares issued and outstanding. Stock ownership, limitation. 54 Stat. 899. 49 USC 1.

(c) At no time may any stockholder, or any syndicate or affiliated group of such stockholders, own more than 10 per centum of the shares of preferred stock of the Corporation issued and outstanding.

(d) The articles of incorporation shall provide that no shares of any issue of stock may be redeemed or repurchased for five years, following the date of enactment of this Act.

(e) The Corporation is authorized to issue, in addition to the stock authorized by subsection (a) of this section, nonvoting securities, bonds, debentures, and other certificates of indebtedness as it may determine. Bonds, securities, etc., authorization.

(f) The requirement of section 45(b) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-920(b)) as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the Corporation, and they may exercise such rights without regard to the percentage of stock they hold. Inspection rights requirements, exemption. 68 Stat. 197.

SEC. 305. GENERAL POWERS OF THE CORPORATION.

The Corporation is authorized to own, manage, operate, or contract for the operation of intercity trains operated for the purpose of providing modern, efficient, intercity transportation of passengers and to carry mail and express on such trains; to conduct research and development related to its mission; and to acquire by construction, purchase, or gift, or to contract for the use of, physical facilities, equipment, and devices necessary to rail passenger operations. The Corporation shall, consistent with prudent management of the affairs of the Corporation, rely upon railroads to provide the employees necessary to the operation and maintenance of its passenger trains and to the performance of all services and work incidental thereto, to the extent the railroads are able to provide such employees and services in an economic and efficient manner. To carry out its functions and purposes, the Corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act. 68 Stat. 179; 73 Stat. 242. D. C. Code 29-901.

SEC. 306. APPLICABILITY OF THE INTERSTATE COMMERCE ACT AND OTHER LAWS.

(a) The Corporation shall be deemed a common carrier by railroad within the meaning of section 1(3) of the Interstate Commerce Act and shall be subject to all provisions of the Interstate Commerce Act other than those pertaining to— 41 Stat. 474; 54 Stat. 899. 49 USC 1.

(1) regulation of rates, fares, and charges;

(2) abandonment or extension of lines of railroads utilized solely for passenger service, and the abandonment or extension of operations over such lines of railroads, whether by trackage rights or otherwise;

(3) regulation of routes and service and, except as otherwise provided in this Act, the discontinuance or change of passenger train service operations.

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(b) The Corporation shall be subject to the same laws and regulations with respect to safety and with respect to the representation of its employees for purposes of collective bargaining, the handling of disputes between carriers and their employees, employee retirement, annuity and unemployment systems, and other dealings with its employees as any other common carrier subject to part I of the Interstate Commerce Act.

24 Stat. 379; 54 Stat. 919. 49 USC 27 and note.

(c) The Corporation shall not be subject to any State or other law pertaining to the transportation of passengers by railroad as it relates to rates, routes, or service.

(d) Leases and contracts entered into by the Corporation, regardless of the place where the same may be executed, shall be governed by the laws of the District of Columbia.

(e) Persons contracting with the Corporation for the joint use or operation of such facilities and equipment as may be necessary for the provision of efficient and expeditious passenger service shall be and are hereby relieved from all prohibitions of existing law, including the antitrust laws of the United States, with respect to such contracts, agreements, or leases insofar as may be necessary to enable them to enter into such contracts and to perform their obligations thereunder.

SEC. 307. SANCTIONS.

(a) If the Corporation or any railroad engages in or adheres to any action, practice, or policy inconsistent with the policies and purposes of this Act, obstructs or interferes with any activities authorized by this Act, refuses, fails, or neglects to discharge its duties and responsibilities under this Act, or threatens any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which the Corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any employee affected thereby, including duly authorized employee representatives, to grant such equitable relief as may be necessary or appropriate to prevent or terminate any violation, conduct, or threat.

(b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act.

SEC. 308. REPORTS TO THE CONGRESS.

Annual reports.

(a) The Corporation shall transmit to the President and the Congress, annually, commencing one year from the date of enactment of this Act, and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act, including a statement of receipts and expenditures for the previous year. At the time of its annual report, the Corporation shall submit such legislative recommendations as it deems desirable, including the amount of financial assistance needed for operations and for capital improvements, the manner and form in which the amount of such assistance should be computed, and the sources from which such assistance should be derived.

Legislative recommendations.

Biennial reports.

(b) The Secretary and the Commission shall transmit to the President and the Congress, one year following the date of enactment of this Act and biennially thereafter, reports on the state of rail passenger service and the effectiveness of this Act in meeting the requirement for a balanced national transportation system, together with any legislative recommendations.

TITLE IV—PROVISION OF RAIL PASSENGER SERVICES

SEC. 401. ASSUMPTION OF PASSENGER SERVICE BY THE CORPORATION; COMMENCEMENT OF OPERATIONS.

Intercity rail passenger service, contracts.

(a)(1) On or before May 1, 1971, the Corporation is authorized to contract and, upon written request therefor from a railroad, shall tender a contract to relieve the railroad, from and after May 1, 1971, of its entire responsibility for the provision of intercity rail passenger service. On or after March 1, 1973, but before January 1, 1975, the Corporation is authorized to contract, and upon written request therefor, shall tender a contract to relieve the railroad of its entire responsibility for the provision of intercity rail passenger service and such relief shall become effective upon the date on which such contract is entered into. Contracts may be entered into on or before May 1, 1971, notwithstanding the fact that the decision of the Commission under section 102(f) of this Act with respect to avoidable loss has not become final. Any contract entered into before such decision of the Commission has become final shall be subject to adjustment to assure that the contract is consistent with such final decision of the Commission. The contract may be made upon such terms and conditions as necessary to permit the Corporation to undertake passenger service on a timely basis. Upon its entering into a valid contract (including protective arrangements for employees), the railroad shall be relieved of all its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under part I of the Interstate Commerce Act or any State or other law relating to the provision of intercity passenger service: *Provided*, That any railroad discontinuing a train hereunder must give notice in accordance with the notice procedures contained in section 13a(1) of the Interstate Commerce Act.

Ante, p. 1328.

24 Stat. 379; 54 Stat. 919. 49 USC 27, and note. 72 Stat. 571. 49 USC 13a.

Passenger service deficit payments.

(2) In consideration of being relieved of this responsibility by the Corporation, the railroad shall agree to pay to the Corporation each year for three years an amount equal to one-third of 50 per centum of the fully distributed passenger service deficit of the railroad as reported to the Commission for the year ending December 31, 1969. The payment to the Corporation may be made in cash or, at the option of the Corporation, by the transfer of rail passenger equipment or the provision of future service as requested by the Corporation. Unless the railroad waives all rights to receive stock in exchange for its payments, the railroad shall receive common stock from the Corporation in an amount equivalent in par value to each payment.

(3) In agreeing to pay the amount specified in paragraph (2) of this subsection, a railroad may reserve the right to pay a lesser sum to be determined by calculating either of the following:

(A) 100 per centum of the avoidable loss of all intercity rail passenger service operated by the railroad during the period January 1, 1969, through December 31, 1969; or

(B) 200 per centum of the avoidable loss of the intercity rail passenger service operated by the railroad during the period January 1, 1969, through December 31, 1969, covering all intercity service over the routes between those points between which the Secretary, under sections 201 and 202 of title II of this Act, has specified that intercity passenger trains shall be operated within the basic system.

Ante, p. 1329.

If the amount owed the Corporation under either of these alternatives is agreed by the parties to be less than the amount paid pursuant to paragraph (2), the Corporation shall pay the difference to the railroad and the railroad shall surrender to the Corporation an amount of stock, at par value, equivalent to such payment. If the railroad and the

Corporation are unable to agree as to the amount owed, the matter shall be referred to the Interstate Commerce Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, or within such additional time as the Commission may order not to exceed an aggregate of one hundred and eighty days following such date of referral, and its decision shall be binding on both parties.

Payment schedule.

(4) The payments to the Corporation shall be made in accordance with a schedule to be agreed upon between the parties. Unless the parties otherwise agree, the payments for each of the first twelve months following the date on which the Corporation assumes any of the operational responsibilities of the railroad shall be in cash and not less than one thirty-sixth of the amount owed.

Commencement of operations.

(b) On May 1, 1971, the Corporation shall begin the provision of intercity rail passenger service between points within the basic system unless such service is being provided (i) either by a railroad with which it has not entered into a contract under subsection (a) of this section or (ii) by a regional transportation agency, provided such agency gives satisfactory assurance to the Corporation of the agency's financial and operating capability to provide such service, and of its willingness to cooperate with the Corporation and with other regional transportation agencies on matters of through train service, through car service, and connecting train service. The Corporation may at any time subsequent to May 1, 1971, contract with a regional transportation agency to provide intercity rail passenger service between points within the basic system included within the service of such agency.

Prohibition.

(c) No railroad or any other person may, without the consent of the Corporation, conduct intercity rail passenger service over any route over which the Corporation is performing scheduled intercity rail passenger service pursuant to a contract under this section.

SEC. 402. FACILITY AND SERVICE AGREEMENTS.

(a) The Corporation may contract with railroads or with regional transportation agencies for the use of tracks and other facilities and the provision of services on such terms and conditions as the parties may agree. In the event of a failure to agree, the Interstate Commerce Commission shall, if it finds that doing so is necessary to carry out the purposes of this Act, order the provision of services or the use of tracks or facilities of the railroad by the Corporation, on such terms and for such compensation as the Commission may fix as just and reasonable, and the rights of the Corporation to such services or to the use of tracks or facilities of the railroad or agency under such order or under an order issued under subsection (b) of this section shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission. If the amount of compensation fixed is not duly and promptly paid, the railroad or agency entitled thereto may bring an action against the Corporation to recover the amount properly owed.

Interstate Commerce Commission, authority.

(b) To facilitate the initiation of operations by the Corporation within the basic system, the Commission shall, upon application by the Corporation, require a railroad to make immediately available tracks and other facilities. The Commission shall thereafter promptly proceed to fix such terms and conditions as are just and reasonable.

SEC. 403. NEW SERVICE.

(a) The Corporation may provide intercity rail passenger service in excess of that prescribed for the basic system, either within or outside the basic system, including the operation of special and extra passenger trains, if consistent with prudent management. Any intercity rail passenger service provided under this subsection for a continuous period of two years shall be designated by the Secretary as a part of the basic system.

(b) Any State, regional, or local agency may request of the Corporation rail passenger service beyond that included within the basic system. The Corporation shall institute such service if the State, regional, or local agency agrees to reimburse the Corporation for a reasonable portion of any losses associated with such services. Rail service beyond basic system.

(c) For purposes of this section the reasonable portion of such losses to be assumed by the State, regional, or local agency, shall be no less than 66⅔ per centum of, nor more than, the solely related costs and associated capital costs, including interest on passenger equipment, less revenues attributable to, such service. If the Corporation and the State, regional, or local agency are unable to agree upon a reasonable apportionment of such losses, the matter shall be referred to the Secretary for decision. In deciding this issue the Secretary shall take into account the intent of this Act, and the impact of requiring the Corporation to bear such losses upon its ability to provide improved service within the basic system. Reimbursement costs.

SEC. 404. DISCONTINUANCE OF SERVICE.

(a) Unless it has entered into a contract with the Corporation pursuant to section 401(a)(1) of this Act, no railroad may discontinue any intercity passenger train whatsoever prior to January 1, 1975, the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, a Federal or State court, agency, or authority to the contrary notwithstanding. On and after January 1, 1975, passenger train service operated by such railroad may be discontinued under the provisions of section 13a of the Interstate Commerce Act. Upon filing of a notice of discontinuance by such railroad, the Corporation may undertake to initiate passenger train operations between the points served. 72 Stat. 571. 49 USC 13a.

(b)(1) The Corporation must provide the service included within the basic system until July 1, 1973, to the extent it has assumed responsibility for such service by contract with a railroad pursuant to section 401 of this Act.

(2) Except as provided in section 403(a) of this Act, service beyond that prescribed for the basic system undertaken by the Corporation upon its own initiative may be discontinued at any time.

(3) If at any time after July 1, 1973, the Corporation determines that any train or trains in the basic system in whole or in part are not required by public convenience and necessity, or will impair the ability of the Corporation to adequately provide other services, such train or trains may be discontinued under the procedures of section 13a of the Interstate Commerce Act (49 U.S.C. 13a): *Provided, however*, That at least thirty days prior to any change or discontinuance, in whole or in part, of any service under this subsection, the Corporation shall mail to the Governor of each State in which the train in question is operated, and post in every station, depot, or other facility served thereby notice of the proposed change or discontinuance. The Corporation may not change or discontinue this service if prior to the end of the thirty-day notice period, State, regional, or local agencies request continuation of the service and within ninety days agree to reimburse the Corporation for a reasonable portion of any losses associated with the continuation of service beyond the notice period. Notice to Governors of change in service.

(4) For the purposes of paragraph (3) of this subsection, the reasonable portion of such losses to be assumed by the State, regional, or local agency shall be no less than 66⅔ per centum of, nor more than, the solely related costs and associated capital costs, including interest on passenger equipment, less revenues attributable to, such service. If the Corporation and the State, regional, or local agency are unable to agree upon a reasonable apportionment of such losses, the matter

shall be referred to the Secretary for decision. In deciding this issue, the Secretary shall take into account the purposes of this Act and the impact of requiring the Corporation to bear such losses upon its ability to provide improved service within the basic system.

SEC. 405. PROTECTIVE ARRANGEMENTS FOR EMPLOYEES.

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees affected by discontinuances of intercity rail passenger service whether occurring before, on, or after January 1, 1975.

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act. Any contract entered into pursuant to the provisions of this title shall specify the terms and conditions of such protective arrangements. No contract under section 401(a)(1) of this Act between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees fair and equitable protection by the railroad.

54 Stat. 905.
49 USC 5.

(c) After commencement of operations in the basic system, the substantive requirements of subsection (b) of this section shall apply to the Corporation. The certification by the Secretary of Labor that employees affected have been provided fair and equitable protection as required by this section shall be a condition to the completion of any transaction requiring such protection.

(d) The Corporation shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

49 Stat. 1011; 78 Stat. 238. 40 USC 276a-276a-5.

83 Stat. 96.

44 Stat. 577; 49 Stat. 1189. 45 USC 151-188.

(e) The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service upon the date of enactment of this Act and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

TITLE V—ESTABLISHMENT OF A FINANCIAL INVESTMENT ADVISORY PANEL

SEC. 501. APPOINTMENT OF ADVISORY PANEL.

Within thirty days after enactment of this Act, the President shall appoint a fifteen-man financial advisory panel. Six members of the panel shall represent the business of investment banking, commercial banking, and rail transportation. Two members shall be representatives of the Secretary of the Treasury and seven members shall represent the public in the various regions of the Nation.

SEC. 502. PURPOSE OF ADVISORY PANEL.

The advisory panel appointed by the President shall advise the directors of the Corporation on ways and means of increasing capitalization of the Corporation.

SEC. 503. REPORT TO CONGRESS.

On or before January 1, 1971, the panel shall submit a report to Congress evaluating the initial capitalization of the Corporation and the prospects for increasing its capitalization.

TITLE VI—FEDERAL FINANCIAL ASSISTANCE

SEC. 601. FEDERAL GRANTS.

There is authorized to be appropriated to the Secretary in fiscal year 1971, $40,000,000 to remain available until expended, for payment to the Corporation for the purpose of assisting in—

(1) the initial organization and operation of the Corporation;

(2) the establishment of improved reservations systems and advertising;

(3) servicing, maintenance, and repair of railroad passenger equipment;

(4) the conduct of research and development and demonstration programs respecting new rail passenger services;

(5) the development and demonstration of improved rolling stock; and

(6) essential fixed facilities for the operation of passenger trains on lines and routes included in the basic system over which no through passenger trains are being operated at the time of enactment of this Act, including necessary track connections between lines of the same or different railroads.

SEC. 602. GUARANTY OF LOANS.

The Secretary is authorized, on such terms and conditions as he may prescribe, to guarantee any lender against loss of principal or interest on securities, obligations, or loans issued to finance the upgrading of roadbeds and the purchase by the Corporation or agency of new rolling stock, rehabilitation of existing rolling stock and for other corporate purposes. The maturity date of such securities, obligations, or loans, including all extensions and renewals thereof, shall not be later than twenty years from their date of issuance, and the amount of guaranteed loans outstanding at any time may not exceed $100,000,000. The Secretary shall prescribe and collect from the lending institution a reasonable annual guaranty fee. There are authorized to be appropriated such amounts as necessary to carry out this section not to exceed $100,000,000.

Maturity date.

Appropriation.

TITLE VII—INTERIM EMERGENCY FEDERAL FINANCIAL ASSISTANCE

SEC. 701. INTERIM AUTHORITY TO PROVIDE EMERGENCY FINANCIAL ASSISTANCE FOR RAILROADS OPERATING PASSENGER SERVICE.

(a) For the purpose of permitting a railroad to enter into or carry out a contract entered into under this Act, the Secretary is authorized, on such terms and conditions as he may prescribe, to (1) make loans to such railroad, or (2) guarantee any lender against loss of principal or interest on any loan to such railroad.

Conditions.

(b) Before making a loan or a guarantee under this section, the Secretary must find, in writing, that—

(1) the loan or guarantee is necessary to carry out the provisions of this Act;

(2) the proceeds of any loan made or guaranteed under this Act will be used solely to carry out contracts entered into under this Act;

(3) the loan or guarantee is not otherwise available on reasonable terms and conditions; and

(4) there is reasonable assurance that the business affairs of the railroad will be conducted in a prudent manner.

(c) (1) In any case in which there is a liquidation of the assets of any railroad which is the recipient of a loan made or guaranteed under this Act, the United States shall have the first right to redeem that portion of such assets consisting of those rights-of-way, tracks, and other facilities designated by the Secretary to be necessary for the purpose of providing intercity rail passenger service, including services employing innovative technology, within the basic system.

(2) It is the intent of the Congress that, in the case of a loan guarantee under this Act, the United States shall stand in the same position with respect to other creditors as in the case of a direct loan by the United States giving the United States priority over secured and unsecured creditors.

Interest rate, determination by Treasury Secretary.

(d) Interest on loans made under this section shall be at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of such loans adjusted to the nearest one-eighth of one per centum.

(e) The maturity date on any loan made or guaranteed under this section, including renewals and extensions thereof, shall not be later than five years from the date of issuance.

(f) The aggregate amount of loans and loan guarantees made under this section shall not exceed $200,000,000.

SEC. 702. AUTHORIZATION FOR APPROPRIATIONS.

There are hereby authorized to be appropriated such amounts not to exceed $200,000,000 as may be necessary to carry out the purposes of this title. Any sums appropriated shall be available until expended.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. ADEQUACY OF SERVICE.

Regulations, violation, penalty.

The Commission is authorized to prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service. Any person who violates a regulation issued under this section shall be subject to a civil penalty of not to exceed $500 for each violation. Each day a violation continues shall constitute a separate offense.

SEC. 802. EFFECT ON PENDING PROCEEDINGS.

Upon enactment of this Act, no railroad may discontinue any intercity rail passenger service whatsoever other than in accordance with the provisions of this Act, notwithstanding the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any Federal or State court, agency, or authority.

SEC. 803. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby

SEC. 804. ACCOUNTABILITY.

Section 201 of the Government Corporation Control Act (31 U.S.C. 856) is amended by striking out "and" immediately preceding "(5)" and by inserting immediately before the period at the end thereof the following: "and (6) the National Railroad Passenger Corporation". 59 Stat. 600; 70 Stat. 667.

SEC. 805. RECORDS AND AUDIT OF THE CORPORATION.

(1)(A) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audit shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person conducting the audit; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person. Annual audit by independent accountants.

(B) The report of each such independent audit shall be included in the annual report required by section 308(a) of this Act. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor's opinion of those statements. Report to Congress, contents. Ante, p. 1333.

(2)(A) The financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Comptroller General of the United States in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation. Audit by Comptroller General. Records, availability.

(B) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may Report to Congress, contents.

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deem necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress.

Reports, copy to President.

TITLE IX—TAX DEDUCTION FOR CERTAIN PAYMENTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

SEC. 901. (a) Part VIII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to special deductions for corporations) is amended by adding at the end thereof the following new section:

68A Stat. 72; 83 Stat. 612. 26 USC 241-249.

"SEC. 250. CERTAIN PAYMENTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION.

"(a) GENERAL RULE.—If—

"(1) any corporation which is a common carrier by railroad (as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))) makes a payment in cash, rail passenger equipment, or services to the National Railroad Passenger Corporation (hereinafter in this section referred to as the 'Passenger Corporation') pursuant to a contract entered into under section 401(a) of the Rail Passenger Service Act of 1970, and

41 Stat. 474; 54 Stat. 899.

"(2) no stock in the Passenger Corporation is issued at any time to such corporation in connection with any contract entered into under such section 401(a),

then the amount of such payment shall (subject to subsection (c)) be allowed as a deduction for the taxable year in which it is made.

"(b) WHEN PAYMENT IS MADE.—Under regulations prescribed by the Secretary or his delegate, a payment in rail passenger equipment shall be treated as made when title to the equipment is transferred, and a payment in services shall be treated as made when the services are rendered.

"(c) EFFECT OF CERTAIN SUBSEQUENT ACQUISITIONS OF STOCK.—

"(1) DISALLOWANCE OF DEDUCTIONS.—If any deduction has been allowed under subsection (a) to a corporation and such corporation (or a successor corporation) acquires any stock in the Passenger Corporation (other than in a transaction described in section 374 or 381) before the close of the 36-month period which begins with the day on which the last payment is made to the Passenger Corporation pursuant to the contract entered into under such section 401(a), then such deduction shall be disallowed (as of the close of the taxable year for which it was allowed under subsection (a)).

70 Stat. 402; 68A Stat. 124. 26 USC 374, 381.

"(2) COLLECTION OF DEFICIENCY.—If any deduction is disallowed by reason of paragraph (1), then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such a disallowance, include one year following the date on which the person acquiring the stock which results in the disallowance (in accordance with regulations prescribed by the Secretary or his delegate) notifies the Secretary or his delegate of such acquisition; and such assessment and col-

68A Stat. 803. 26 USC 6501, 6502.

lection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

"(d) MEMBERS OF CONTROLLED GROUP.—Under regulations prescribed by the Secretary or his delegate, if a corporation is a member of a controlled group of corporations (within the meaning of section 1563), subsections (a)(2) and (c) shall be applied by treating all members of such controlled group as one corporation." 78 Stat. 120; 83 Stat. 602. 26 USC 1563.

(b) The table of sections for such part VIII is amended by adding at the end thereof the following:

"Sec. 250. Certain payments to the National Railroad Passenger Corporation."

(c) The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act. Effective date.

Approved October 30, 1970.

LEGISLATIVE HISTORY:

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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-689.

COMMONWEALTH OF PENNSYLVANIA, et al.,
Petitioners,

v.

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., and WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF THE PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinions of the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit are adequately cited and set forth in the Petition and in the Appendices thereto.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED.

1. Whether a Reorganization Court has the power to centralize litigation, which, if proliferated in other forums, would impede the progress of reorganization under the Bankruptcy Act.

2. Whether the Penn Central Transportation Company Reorganization Court properly exercised its discretion by enjoining litigation in other forums against the Respondents regarding discontinuance of passenger service pursuant to the Rail Passenger Service Act of 1970.

STATUTE INVOLVED.

The statute involved is the Rail Passenger Service Act of 1970, 45 U. S. C. § 501 *et seq.*, 84 Stat. 1327, P. L. 91-518, enacted October 30, 1970. This Statute is set forth in full in Appendix C to the Petition.

COUNTERSTATEMENT OF THE CASE.

After entering reorganization under Bankruptcy Act Section 77, 11 U. S. C. § 205 *et seq.*, the Penn Central Transportation Company (Penn Central) was authorized by the Interstate Commerce Commission (I. C. C.) to discontinue certain passenger trains between Buffalo, New York and Chicago, Illinois. The instant petitioners sought review of the I. C. C. order in the Western District of Pennsylvania before a statutory three-judge court, which granted interlocutory injunctive relief. The Trustees of the property of Penn Central (the Trustees) appealed, to the United States Supreme Court, the decision of the statutory court insofar as that decision extended to certain train service in Canada.

The Rail Passenger Service Act of 1970 (the Amtrak Statute) was enacted into law on October 30, 1970. This Statute authorized the creation of the National Rail Passenger Corporation (initially identified as Railpax and now known at Amtrak) which would provide intercity rail passenger service. The Statute barred the discontinuance of intercity passenger trains until at least May 1, 1971. The Statute specified the sole means for discontinuance of such trains, notwithstanding the pendency of any proceedings before any federal or state courts. Accordingly, on February 22, 1971, the Trustees' pending appeal from the statutory court's interlocutory injunction was dismissed on grounds of mootness:

> "The judgment is vacated and the case is remanded to the United States District Court for the Western District of Pennsylvania with instructions to vacate the interlocutory injunction appealed from because the injunction, together with the underlying cause, has become moot." *Baker v. Pennsylvania,* 401 U. S. 902 (1971).

The instant petitioners, apparently apprehensive that the Trustees would, in violation of the Amtrak Statute, discontinue the train service involved in the statutory court proceedings, filed a new civil action in the United States District Court for the Western District of Pennsylvania again seeking injunctive relief against discontinuance of the same train service. On March 31, 1971, the Trustees petitioned the Honorable John P. Fullam, Judge of the United States District Court for the Eastern District of Pennsylvania (the Penn Central Transportation Company Reorganization Court) for authority to enter into a contract with Amtrak. Shortly thereafter, the Trustees petitioned the Reorganization Court for an order directing the instant petitioners to show cause why their action in the Western District of Pennsylvania should not be restrained, unless the Reorganization Court granted leave to proceed with such suit. Following hearing on the Trustees' latter petition, Judge Fullam determined that litigation, such as that being pursued by the instant petitioners in the Western District of Pennsylvania, would clearly hamper the Penn Central Reorganization efforts. Accordingly, on April 16, 1971, Judge Fullam entered Order No. 232 which enjoined the instant petitioners from proceeding with said litigation and which also required leave of the Reorganization Court prior to the institution or maintenance of litigation involving Penn Central and affecting the continuance or discontinuance of passenger trains covered by the Amtrak Statute. For the protection of the public, Order No. 232 also required the Trustees to provide additional notice prior to discontinuance of intercity passenger service pursuant to the Amtrak Statute.[1]

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1. Order No. 232 does not restrain litigation which might be brought by departments and agencies of the Federal government. This exception is consistent with the Amtrak Statute, which authorizes only the United States Attorney General to bring suits to enjoin

The Court of Appeals heard this matter together with appeals taken by railway labor organizations from the Reorganization Court's Order No. 242, which denied leave to join the Trustees in litigation in the District of Columbia regarding labor protective provisions under the Amtrak Statute. The Court of Appeals affirmed both Orders Nos. 232 and 242. The Court concluded that the Reorganization Court had the power to enjoin litigation which would remove from the Reorganization Court any question which it had a duty to decide in connection with the Reorganization, or which would hamper the Reorganization Court in any way in exercising the power imposed upon it. The Court of Appeals specifically concluded that Order No. 232 was a proper exercise of the Reorganization Court's discretion.

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violations of the Statute. See discussion *infra* at pp. 13-18. Order No. 232 is reproduced in full on p. 9a of Appendix A to the Petition. In accordance with Order No. 232, certain of the instant petitioners have filed, in the Eastern District of Pennsylvania, three civil actions regarding the Trustees' discontinuance of trains pursuant to the Amtrak Statute. These cases have been assigned to Judge Fullam.

REASONS FOR DENYING THE WRIT.

I. This Case Was Correctly Decided by the Courts Below.

A. In Order to Effectuate Its Jurisdiction Under the Bankruptcy Act, the Reorganization Court Has the Clear Power to Enjoin the Prosecution of Litigation, in Other Forums, Tending to Impede the Reorganization Process.

Upon the filing of the reorganization petition, all property interests of the Debtor passed into the custody and control of the Reorganization Court and became subject to the authority of that Court. Mandated by the Bankruptcy Act to effectuate the reorganization of the Debtor, the Court is empowered to effectuate its jurisdiction by enjoining acts which would clearly frustrate the reorganization. This injunctive power further stems from the general equity powers of a reorganization court to protect the property under its aegis. It is clear that this injunctive power authorizes the Reorganization Court to restrain the prosecution of suits, in other forums, which would tend to hinder the progress of the reorganization.

This power was recognized in *Ex parte Baldwin*, 291 U. S. 610 (1934). In this case, railroad reorganization trustees sought a writ of mandamus to compel the transfer of a suit instituted in a state court, seeking injunctive and monetary relief regarding the trustees' abandonment of rail service. The Supreme Court denied the extraordinary remedy of mandamus in view of the availability of the more common injunctive remedy, available to the railroad reorganization court, to restrain the state court suit if it interfered with the jurisdiction of the reorganization court. In reaching this conclusion, the Court stated:

> "All property in the possession of a bankrupt of which he claims the ownership passes, upon the filing of a

> petition in bankruptcy, into the custody of the court of bankruptcy. To protect its jurisdiction from interference, that court may issue an injunction. The power is not peculiar to bankruptcy or to the federal courts. It is an application of the general principle that, where a court of competent jurisdiction has, through its officers, taken property into its possession, the property is thereby withdrawn from the jurisdiction of other courts. Having possession, the court may not only issue all writs necessary to protect its possession from physical interference, but is entitled to determine all questions respecting the same." 291 U. S. at 615.

Pertinent provisions of the Bankruptcy Act specifically contemplate the bankruptcy court's enjoining of litigation. Bankruptcy Act Section 2(a)(15), 11 U. S. C. § 11(a)(15) empowers a court of bankruptcy to:

> "Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act: Provided, however, That an injunction to restrain a court may be issued by the judge only."

Bankruptcy Act Section 77(j), 11 U. S. C. § 205(j), expressly authorizes the Reorganization Court to stay suits and to enjoin the initiation of litigation against the Trustees. This injunctive power is qualified only in the case, not here applicable, of suits for damages caused by the operation of trains or other means of transportation. Bankruptcy Act Section 77(j) provides in appropriate part:

> "In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or

> continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: Provided, That suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated."

Section 77(j) thus further justifies the Reorganization Court's entry of a general stay of the prosecution of litigation against the Trustees in other forums. Order No. 1, entered by the Reorganization Court on June 21, 1970, contains such a restraint and injunction of the commencement or continuation of any legal proceedings against the Trustees, with the exception of suits for damages caused by the operation of trains.

The broad injunctive power of the reorganization court to restrain litigation in other forums has been repeatedly recognized by this Court and by the Circuit Courts. Such injunctive power is impelled by the need to centralize the entire administration of a debtor's estate in a single reorganization court. The exercise of this power, within the sound discretion of the reorganization judge, serves to protect the express jurisdiction granted the reorganization court over the debtor's property and to prevent any hinderance of the reorganization of the debtor. See, e.g., *Duggan v. Sansberry*, 327 U. S. 499, 511 (1946); *In re New York, New Haven and Hartford R. R. Co.*, 447 F. 2d 428, 430 (2 Cir. 1971); *In re Imperial "400" National, Inc.*, 429 F. 2d 671, 677 (3 Cir. 1970); *Diners Club, Inc. v. Bumb*, 421 F. 2d 396, 398 (9 Cir. 1970); *First National Bank in Houston,*

Texas v. Lake, 199 F. 2d 524, 528 (4 Cir. 1952), cert. denied 344 U. S. 914; *Shearman v. Missouri-Pacific R. R. Co.*, 250 F. 2d 191 (8 Cir. 1957). See also *Steelman v. All Continent Corp.*, 301 U. S. 278 (1937) (straight bankruptcy).

B. Order No. 232 Was a Proper Exercise of the Penn Centra. Transportation Company Reorganization Court's Discretionary Power to Enjoin Actual and Threatened Litigation Against the Trustees in Other Forums.

By their March 31, 1971 petition concerning entry into Amtrak, the Trustees had placed before the Court an essential aspect of the reorganization. Under the Amtrak Statute, this critical question had to be decided on a very narrow timetable. If there was to be a contract with Amtrak, it had to be executed prior to May 1, 1971. Failing a contract, the debtor's estate would be crippled by maintenance of all intercity passenger service until 1975. Execution of such a contract, and the Trustees' assumption of the substantial financial obligations under such contract, necessitated the prompt centralized determination of whether the Trustees would be authorized to discontinue passenger train service in accordance with the contract and with the Amtrak Statute. Litigation against the Trustees in other forums would have imposed an insurmountable impediment to the Reorganization Court's and the Trustees' resolution of the crucial passenger service aspect of the Penn Central reorganization. Thus, Order No. 232 was a necessary and proper exercise of the Reorganization Court's discretionary power to restrain suits, in other forums, which would impede the reorganization.

In the Opinion in support of Order No. 232, Judge Fullam acknowledged that, prior to enactment of the Amtrak Statute, the type and volume of litigation arising

from train discontinuances normally would not seriously affect the Reorganization Proceedings. However, the Reorganization Court recognized, and the Court of Appeals confirmed, the detrimental effect on the Reorganization Proceedings of profuse litigation, arising under the Amtrak Statute, which could enmesh the Trustees in other courts:

> "It is a matter of common knowledge that very many interested persons and governmental entities and agencies question the adequacy of intercity rail passenger service proposed to be supplied by Railpax. It is not inconceivable that, if they were free to do so, large numbers of such persons, entities and groups might seek to litigate particular issues in a wide variety of forums. This would clearly hamper reorganization efforts, not only because of the burden of the litigation itself, but because of the prospect of inconsistent results. It is apparent, therefore, that, at least for the present, this Court should retain control over litigation involving the impact of the National Rail Passenger Service Act of 1970 upon the Debtor." See *In re Penn Central Transportation Company*, 446 F. 2d 1109, 1113 (3 Cir. 1971).

In view of the importance of the Reorganization Court's reaching a decision on the Trustees' participation in Amtrak, the Reorganization Court's entry of Order No. 232 was a proper exercise of its discretionary power to restrain the prosecution of distracting litigation in other forums. Order No. 232 was in accord with a fundamental policy underlying reorganizations, namely the centralization in the reorganization court of matters essential to effective administration of the debtor's estate and its ultimate reorganization.

With regard to the petitioners' suit in the Western District of Pennsylvania, specifically enjoined by Order No.

232, it is clear that the underlying cause of action is now doubly moot. As discussed *supra* at p. 3, this Court declared such a cause of action moot following passage of the Amtrak Statute. In addition, to the extent that the petitioners' suit sought to prevent the possible violation of the Amtrak Statute by the Trustees, the purpose of the suit has been mooted by the Trustees' compliance with the Statute. The Trustees continued operation of the trains in question until May 1, 1971, at which time the obligation to perform such services was transferred to Amtrak. In accordance with its statutory obligations, Amtrak assumed the operation of certain of these trains and discontinued the operation of the others.

Despite the mootness of their litigation in the Western District of Pennsylvania, the petitioners argue that the Reorganization Court had no jurisdiction to enter Order No. 232 in view of the alleged applicability of state law to discontinuance of intercity passenger train service. This argument is untenable due to the specific preemption, by the Amtrak Statute, of state law previously applicable to the discontinuance of passenger service. The Statute provides:

> "Section 802. *Effect on pending proceedings.* Upon enactment of this Act, no railroad may discontinue any intercity rail passenger service whatsoever other than in accordance with the provisions of this Act, notwithstanding the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any Federal or State court, agency or authority."

In view of such complete preemption of state laws and proceedings by the Statute, the petitioners' reliance on *Palmer v. Massachusetts*, 308 U. S. 79 (1939) is clearly misplaced.

In that case, the Court was presented with no such national legislation which superceded existing state laws and proceedings regarding discontinuance of passenger service. Such national legislation was enacted in response to cases such as *Palmer v. Massachusetts.* See *City of Chicago v. United States,* 396 U. S. 162, 165-166 (1969).[2] Petitioners' reliance on the *Palmer* case overlooks 31 years of history of the decline of railroads in this country, a history culminating in the Amtrak Statute which has made intercity passenger service operation a completely new entity, a national rail system under the aegis of a federally created and funded corporation.

Although the petitioners' suit in the Western District of Pennsylvania is moot, the justification for Order No. 232's injunction of litigation in other forums continues with even greater force. Three civil actions, regarding discontinuance of passenger service in Pennsylvania and New York State pursuant to the Amtrak Statute, have already

---

2. 49 U. S. C. § 13(a), a 1958 amendment to the Interstate Commerce Act, initiated the federal preemption of state laws formerly applicable to train discontinuances. 49 U. S. C. § 13(a) was enacted to provide a single federal standard to govern train discontinuances, whether interstate or intrastate. The purpose of Section 13(a) was to supercede the prior confused and time-consuming procedures (such as confronted the Court in *Palmer v. Massachusetts*) under which the States supervised the discontinuance of passenger train service. See *City of Chicago v. United States, supra; Southern Railway Co. v. North Carolina,* 376 U. S. 93, 100-103 (1964). Thus, even prior to enactment of the Amtrak Statute, Congress and the Courts recognized that efforts to discontinue lightly-patronized passenger trains were unduly hobbled by protracted administrative and judicial proceedings. In enacting the Amtrak Statute, Congress clearly recognized the need for prompt, unfettered action to reduce rationally the past system and number of intercity passenger trains. See Senate Report No. 91-765, 91st Cong., 2nd Sess. (1970), p. 2; 1970 *U. S. Code Cong. and Adm. News,* 91st Cong., 2nd Sess., pp. 4735-4737. Thus, petitioners' intimation that Congress and the Courts have not intended to restrict the scope of *Palmer v. Massachusetts* is ingenuous at best.

been brought against the Trustees. This litigation has been confined to the United States District Court for the Eastern District of Pennsylvania by virtue of Order No. 232. The bringing of similar litigation in the Western District of Pennsylvania and in the Pennsylvania Commonwealth Court (see Petition pp. 5-6) demonstrates the possibilities of proliferation of such litigation. The instant petitioners, who seek to escape the effect of Order No. 232, alone number fourteen governmental entities representing six states. An additional petitioner has participated in a variety of litigation, in various forums, regarding discontinuance of trains pursuant to the Amtrak Statute. If these petitioners, and other persons similarly placed, were freed from the provisions of Order No. 232, it is entirely possible that the Trustees would be subjected to profuse litigation in a variety of forums. As discussed *infra* at pp. 13-18, litigation such as that brought by the instant petitioners is precluded by the Amtrak Statute. Nevertheless, the bringing of such litigation would impose additional burdens on the Trustees' limited legal staff and financial resources. The prosecution of such litigation in a variety of forums also raises the prospect of inconsistent results which could require repeated resolution by this Court. These factors would clearly hinder the Reorganization Proceedings by decentralizing the initial determination of issues bearing on the crucial passenger service aspect of the Penn Central Reorganization.

II. Order No. 232 Does Not Prejudice the Petitioners Since the Amtrak Statute Precludes Their Bringing of Litigation to Prevent Violations of the Statute.

Litigation such as that brought by the instant petitioners seeks to establish the existence of, and to enjoin, violations of the Amtrak Statute. However, under the

Statute, only the United States Attorney General is authorized to bring litigation such as that sought to be prosecuted by parties such as the petitioners. Since the Amtrak Statute precludes the petitioners from bringing such litigation, Order No. 232 does not prejudice the interests of the petitioners.

Section 307 of the Amtrak Statute limits the jurisdiction of the District Courts to impose sanctions for violations of the Statute. The Statute provides in part as follows:

> "Sec. 307. Sanctions.
>
> (a) If the Corporation or any railroad engages in or adheres to any action, practice, or policy inconsistent with the policies and purposes of this Act, obstructs or interferes with any activities authorized by this Act, refuses, fails or neglects to discharge its duties and responsibilities under this Act, or threatens any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which the Corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, *upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any employee affected thereby, including duly authorized employee representatives,* to grant such equitable relief as may be necessary or appropriate to prevent or terminate any violation, conduct, or threat. [Emphasis added]
>
> (b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act."

The cases interpreting this provision confirm the plain meaning of its language—that the Amtrak Statute precludes all categories of suits for purported violations of the Statute, except for suits brought by the United States Attorney General or, with respect to a labor agreement controversy, by employees or their representatives.[3] In *Congress of Railway Unions v. Burlington Northern, Inc.*, 326 F. Supp. 68 (D. D. C. 1971), state governmental agencies, associations of railway labor unions, and a railroad passenger association sought to enjoin the discontinuance of certain passenger trains not included in the basic intercity system designated under the Statute for operation by Amtrak. In discussing Amtrak Statute Section 307(a), the Court stated:

> "As this section clearly states, the jurisdiction of the courts to apply sanctions for violations of the Act attaches only upon the petition of the Attorney General of the United States. The sole exception is suits by employees and their representatives in cases involving labor agreements. Since the plaintiffs are not parties to the contracts between the railroads and Amtrak, and more importantly since the unions are not directly concerned with the notice procedures, a labor agreement is not involved and no rights peculiarly pertaining to employees are asserted. Accordingly, the only person with standing to seek the relief

3. The Trustees have asserted this position in a pending motion to dismiss, for failure to state a claim upon which relief can be granted, Amtrak train discontinuance suits brought in the United States District Court for the Eastern District of Pennsylvania pursuant to Order No. 232. Similar motions have been filed in litigation in other forums regarding discontinuance of service by various railroads in accordance with the Amtrak Statute. These motions are currently under advisement at the District Court level and, in the case of litigation in the District of Columbia discussed immediately *infra*, at the Circuit Court level.

> demanded in this action under Section 307 is the Attorney General. He has chosen not to act . . . .
>
> . . . the Court is constrained to look to the language of the Act as it passed. Clearly in a non-labor agreement dispute only the Attorney General can bring suit for violation of the Act. The plaintiffs do not have standing and this suit must be dismissed." 326 F. Supp. at 78-79.

The Court reached the same conclusion in the companion case of *Potomac Passengers Association v. Chesapeake and Ohio Railway Company,* in which a railway passenger organization sought to enjoin the discontinuance of various passenger trains, in part on the ground that certain of the trains were commuter trains exempt from immediate discontinuance under the Amtrak statute. See 326 F. Supp. 68, 79-80. A similar result was reached in the unreported case of *National Association of Railroad Passengers v. Central of Georgia Railway Company,* (D. D. C. 1971, Civil Action No. 831-71).

Thus, under the Amtrak Statute, actions may be brought only by three proper plaintiffs—the United States Attorney General or, in labor dispute cases not here present, by an affected employee or his representative. If the Amtrak Statute were interpreted to authorize *any* aggrieved person to apply for relief for violation of the Statute, the statutory language authorizing suits by employees and their representatives would be superfluous. However, in enacting the Amtrak Statute, Congress rejected such an expansive invitation to litigation. Instead, Congress chose to limit private rights of action under the Statute to the sole area of labor dispute cases, thus averting the proliferation of litigation under the Amtrak Statute. This was emphasized in the following terms in *Congress of Railway Unions v. Burlington Northern, Inc.,* 326 F. Supp. 68 (D. D. C. 1971):

"... [T]he legislative history of Section 307 ... discloses a Congressional intent to provide an exclusive remedy for violations of the Act and not to grant standing to *any* aggrieved person to seek sanctions. Two of the plaintiffs in this action, Congress of Railway Unions, and Railway Labor Executives' Association, urged during the Congressional consideration of this Act the adoption of an amendment which would have permitted *any* person aggrieved to bring suit against Amtrak or the railroads for violations of the Act. Testimony pointed out that:

> 'As the bill now reads, only the Attorney General, except in cases involving a labor agreement, could bring such actions. Moreover, the present language of section 307 makes only the Corporation subject to suit for violations of the act and our amendment would include any railroad which might not discharge all of its obligations under the law.'

The Committee adopted the proposal to make the railroads subject to suit but explicitly rejected the request that standing to seek judicial enforcement of the Act be broadened to include *any* person aggrieved." 326 F. Supp. at 79.

The specification by Congress of who may bring suit to enforce a statute normally precludes others from doing so. Where, as here, Congress has designated a particular remedy for violation of a statute, additional remedies are normally excluded. Thus, the limited enumeration of proper plaintiffs in the Amtrak Statute should be recognized by the Court and should not be expanded beyond the limits set by Congress. These principles have been applied in a line of cases involving a variety of federal statutes.

See, e.g., *Calhoon v. Harvey*, 379 U. S. 134 (1964); *B. F. Goodrich Company v. Northwest Industries, Inc.*, 429 F. 2d 1349 (3 Cir. 1970), cert. denied 400 U. S. 822; *Powell v. Washington Post Company*, 267 F. 2d 651 (D. C. Cir. 1959), cert. denied 360 U. S. 930. See also *Fleischman v. Maier Brewing Co.*, 386 U. S. 714 (1967); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246 (1951); and *Switchman's Union of North America v. National Mediation Board*, 320 U. S. 297 (1943).

Since Congress has specifically and unambiguously designated who may bring suits to prevent violations of the Amtrak Statute, the Statute is not amenable to creation of a private right of action. Private rights of action on occasion have been implied under statutes which do not provide explicit methods for enforcement. Cf. *J. I. Case v. Borak*, 377 U. S. 426 (1964); *Allen v. State Board of Elections*, 393 U. S. 544 (1969). However, in the face of the express remedies designated by Congress in the Amtrak Statute, such additional remedies should be excluded.

The instant petitioners are not litigating matters involving labor agreements—the sole area amenable to private actions under the Amtrak Statute. Since the petitioners' various suits are precluded by the Statute, the petitioners are not prejudiced by the restraints contained in Order No. 232. Therefore, it can not be established that, as to the instant petitioners, the entry of Order No. 232 was an abuse of discretion by the Penn Central Transportation Company Reorganization Court.

CONCLUSION.

For the foregoing reasons, this cause should not be reviewed by the Court, and the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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REPLY BRIEF

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IN THE

Supreme Court of the United States

No. 71-689

COMMONWEALTH OF PENNSYLVANIA, et al.,

Petitioners,

v.

GEORGE P. BAKER, et al.,

Respondents.

REPLY BRIEF

Petitioners submit this Reply Brief, pursuant to Rule 24(4), concerning the argument advanced by Penn Central Transportation Company, first raised in its brief in opposition, that standing to bring litigation such as that sought by petitioners, is confined to the United States Attorney General. (PC Br., pp. 13-18). Penn Central relies upon *Congress of Railway Unions v. Hodgson*, 326 F. Supp. 68 (D.C. 1971).

We believe this is a matter which further indicates the desirability of plenary consideration by this Court. We disagree with the decision in *Congress of Railway Unions*.

supra. The standing to sue obstacle has been narrowed in recent years. Cf. *Association of Data Processing v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970); K. Davis, *The Liberalized Law of Standing*, 37 U. of Chi. L. Rev. 450 (1970). Moreover, remedies apart from Rail Passenger Service Act of 1970 are expressly saved by virtue of section 307(b) thereto, 45 U.S.C. 547(b).

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